

## REMARKS

The Applicant thanks the Examiner for the courtesy of the telephonic interview of 8/31/07 with the inventor, Brian F. Monahan and the undersigned attorney. While no resolution was reached, it was suggested that claim language should be considered to more clearly point out how different data for each media of a multi-media campaign is collected and processed so as to clarify non-web-based data. The present Amendment provides claims that are believed to more clearly claim, with support in the specification, the invention of the subject patent application.

Claims 1 to 15 are rejected under 35 U.S.C. §103(a) as being obvious and unpatentable over d'Eon *et al.* (U.S. Pat. No. 6,006,197) in view of Robinson (U.S. Pat. No. 5,918,014) and further in view of Cannon (U.S. Pat. No. 6,286,005). This rejection is in error.

In summary of the cited art references, d'Eon *et al.* teaches an internet advertising performance information gathering system that measures the effectiveness of web advertisements by correlating web site impressions (clicks) with post-impression transactional activity (for example., the purchasing of products or services advertised on the web site); (ii) Robinson, in a fashion similar to d'Eon, teaches the gathering of internet advertising information (i.e., tracking clicks or activity on a particular Web ad) to correlate such information with selecting ads for viewers with similar activities, and also teaches changing web advertisements using a rotation schedule. The Applicant believes that the Examiner's characterization of the combination of the internet or online media art of d'Eon and Robinson is essentially correct. In order to introduce offline media, the Examiner cited Cannon. Cannon is a pre-launch media campaign planning tool that primarily teaches the gathering of TV viewer information, directed primarily to optimizing TV delivery to certain demographic audiences; Canon also teaches the gathering of readership information for magazines, newspapers and

web pages to use such information/data to plan ads for a particular viewer or viewing community; for planning of advertising campaigns. The Examiner combines the internet media art of d'Eon *et al* and Robinson with the media planning art of Canon to reach the conclusion that all claims of the subject invention are obvious under 35 U.S.C §103(a).

The present invention, in summary, describes and claims a unified marketing system for tracking, evaluating, constantly updating and reacting interactively on an ongoing basis to performance data of all individual media in a multiple-media advertising campaign measured against, or relative to, their ability to drive expected business goals or objectives with reporting preferably combined into a single dashboard view analyzed and optimized in real time

The present rejection under 35 U.S.C §103(a) relies on internet or online art (d'Eon and Robinson) in combination with offline art (Cannon) and general knowledge to make obvious Applicant's invention. The Examiner, on p. 8 of the Office Action, states "*.....while the combination of d'Eon and Robinson teaches gathering performance information regarding internet marketing performance, the combination does not explicitly teach a business enterprise selecting at least two marketing communications activities from the group of: magazine, newspaper, radio, television and website. However, based on Cannon (column 6, lines 1-14) ..."it is **old and well known to gather and analyze** other types of advertising media such as **television, magazines and newspapers to determine effectiveness**.....It would have been **obvious to one of ordinary skill in the art** at the time of the invention that a business would carry out more than one type of advertising/marketing communications and would **gather and analyze performance data for each type of marketing communications** to gain useful information to make advertising efforts more effective."* (emphasis added). It is the Applicant's position that the combination of cited art does not provide Applicant's invention and that neither Cannon (teaching advertising optimization

media planning techniques for offline media), nor Cannon with d'Eon et al. and Robinson with common knowledge to fill gaps provides or makes obvious Applicant's continuously interactive multi-media invention. The Applicant believes it is not appropriate for the Examiner to make a statement of technical facts that are alleged to be well known or common knowledge in the art at the time of the invention (i.e., regarding gathering and analysis of offline media performance data) without evidentiary support, especially as the facts relate to specialized art and are not unquestionably demonstrable as being well known. The Applicant respectfully disagrees with the Examiner as to Cannon and extrapolation thereof. Accordingly, in support of Applicant's position, enclose please find Declarations under 37 C.F.R. § 1.132 of Brian F. Monahan and Joseph Giannantonio, both of which are qualified experts in the field of the invention beyond the level of ordinary skill in the relevant art. The Declarations of Messrs. Monahan and Giannantonio address the issues of performance data for offline media, various factors involved in the determination of obviousness under 35 U.S.C. §103(a), including providing (i) information on the scope and contents of the prior art along with the differences between the prior art and the claimed invention; and providing (ii) information regarding the lack in the art or general knowledge of any teaching, suggestion or motivation to combine art or common knowledge to reach or make obvious the claimed invention. These statements are contrary to the present obviousness rejection. In addition, Mr. Giannantonio, a recognized expert in evaluating multi-media marketing campaigns against desired business results, in paragraph 5 of his declaration, states that at the time of the invention there was an unmet need for evaluation of multi-media ad campaigns, that the present invention provided foresight of a viable process that if it had been available it would have been useful to provide a solution to this market need. This is evidence of a secondary consideration factor in the determination of obviousness under 35 U.S.C. §103 that should be considered by the Examiner.

In the Declarations of Messrs. Giannantonio and Monahan, both attest that is their opinion as experts in the art to which the invention applies, that neither the teaching of the cited art, nor any other art that they were aware of at the time of the invention, nor the general knowledge of those in the art at that time, provide the invention, or suggest any motivation to modify or combine any knowledge or art at the time the invention was made, with any reasonable expectation of success to arrive at the present invention. In their descriptions of the state of the advertising art at the time of the invention, it is stated that offline media were evaluated with post-campaign data and not on an ongoing interactive real-time basis as required by Applicant's multi-media invention. Both experts agree that *"..... there was at the time the invention was filed no obvious, practical, or technically feasible way to correlate this increasingly real-time data set of business results to individual advertisements of the multi-media advertising messages designed to trigger them."* The invention solved this problem. Also, the Declarations note that technology at the time of the invention could not provide the granular data necessary for ongoing performance evaluation of offline advertising media components of multi-media campaigns. The limitations of collecting offline media data on an ongoing basis at the time of the invention are clear. The necessity for such granular tracking data of marketing efforts was foreseen in the invention and described in the Specification (p. 4, line 22 – p. 5, line 2). Technology advances were foreseen (Specification, p. 5, lines 9-13). At the time of the invention, the collection of real-time performance data of offline media components of a multi-media campaign necessary for Applicant's invention was not available. Accordingly, it is only with the hindsight use of Applicant's invention that marketing communications performance data may be collected, processed or organized, integrated with business objectives in a preferred common reporting interface, evaluated real-time on an ongoing basis relative to business objective(s) so as to determine on an individual medium basis which of the multi-media ads were producing results, and modifying as necessary any individual ongoing marketing communications activities.

Both Declarants concur that *“..... it was neither practiced, nor likely even considered possible or practical, at the time the invention was made, to build marketing reporting and performance optimizing dashboards that give Brands an all-up coordinated view on how their various tactics are doing, to provide real time correlation of each and every medium of multi-channel marketing investments to business objectives, and to have these dashboards pull from various data sources (i.e., media contracts, media delivery information, survey information, call center volume, store foot traffic, sales scanner data, focus group responses, or web site traffic or combinations thereof.”* Both Declarants state that *“.... it would not be obvious to one skilled in the art to combine the internet teachings of d'Eon and Robinson with the computer system of Cannon to arrive at the present invention, and this combination does not in fact produce the invention”* and conclude that *“..... the invention in the subject Application is neither obvious nor predictable from the cited references.”*

The present invention discloses for the first time a novel unified system for tracking performance data (e.g., granular tracking of marketing efforts), evaluating performance of each medium of a multi-medium advertising campaign, constantly updating performance data during an ongoing advertising campaign, and reacting interactively (i.e., modifying media as necessary) on an ongoing basis to the results of multiple media advertising types in view of desired business objective(s). The present invention is a system for interactively handling and integrating varied marketing communications (preferably in a common reporting interface), each medium of which may be evaluated for efficacy in view of desired business objective(s). Varied data sources are integrated. Data may be collected by any convenient means from any of the wide variety of marketing communications cited in the specification, processed, evaluated and reacted to (i.e., increased, decreased, maintained) on an ongoing basis relative to the expected contributions of the marketing communications to business objectives. The specification teaches a system and method for identifying and collecting varied media performance data of a multi-media

advertising campaign, processing such data, evaluating such results data in view of desired business objectives, and reacting concurrently and on an ongoing basis to modify as necessary individual media of the multi-media campaign. Varied data sources are used (web traffic, store foot traffic, sales data, etc.) preferably presented in a single common interface. The invention describes real-time correlation of multi-channel, multiple media, marketing investments relative to identifiable business objectives.

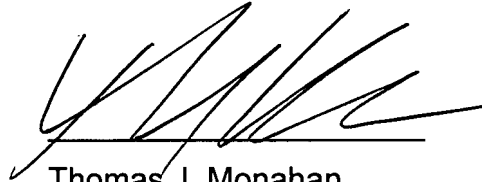
Art directed toward dynamic optimization of online messages and TV or other offline media does not anticipate or make obvious Applicant's correlating or optimization of multi-channel marketing investments in view of accomplishment of business objectives. The reporting and optimizing system of multi-media advertising campaigns of the present invention are novel and unpredictable from the art at the time of the invention.

The Applicant's continuously interactive rapid response marketing system and method for optimizing and unifying various marketing communications of multi-media advertising activities is novel and unobvious and claims are supported in the specification. In addition to the above amendments to the claims and remarks responsive to the subject Office Action, the Applicant also urges consideration of the facts and opinions in the attached Declarations under 37 C.F.R. §1.132 relative to the Examiner's position of record. The Applicant believes that the rejection under 35 U.S.C. §103(a), as applied to pending claims, should be reconsidered and withdrawn. The claims as currently presented distinguish from the cited art and represent patentable subject matter. Reconsideration and allowance, being in order, are earnestly solicited. Should there be further issues, the undersigned would welcome a telephone call to facilitate their resolution.

Respectfully submitted,

DATE: 11 October 2007

By:

A handwritten signature in black ink, appearing to read 'T. Monahan', written over a horizontal line.

Thomas J. Monahan  
Attorney for Applicant  
Registration No. 29, 835  
Monahan & Costello, LLC  
4154 Madison Avenue  
Trumbull, CT 06611  
Tel: (203) 373-1919